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8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**  
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11 PAUL OLDS,

12 Plaintiff,

13 v.

14 3M COMPANY (aka MINNESOTA  
15 MINING & MANUFACTURING  
16 COMPANY, *et al.*

17 Defendants.  
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Case No. 2:12-cv-08539 R (MRWx)

**UNCONTROVERTED FACTS AND  
CONCLUSIONS OF LAW IN  
SUPPORT OF GRANTING  
DEFENDANT PNEUMO ABEX  
LLC'S MOTION FOR SUMMARY  
JUDGMENT**

19 The Court's ruling granting Defendant Pneumo Abex LLC's ("Abex")  
20 Motion for Summary Judgment is based on the findings of Uncontroverted Facts  
21 and Conclusions of Law, as set forth below, and for the reasons stated on the record  
22 at the November 25, 2013 hearing on Abex's Motion for Summary Judgment.

23 **UNCONTROVERTED MATERIAL**  
24 **FACTS**

- 25 1. Plaintiff Paul Olds worked as a  
26 service manager at Ryder Trucks  
27 starting around March 1969 until he  
28 retired in May 1980.

**SUPPORTING EVIDENCE**

1. Deposition of Paul Olds, Volume I, taken January 15, 2013, p. 117:11-17 and Volume II, taken January 16, 2013, p. 398:8-400:4, attached as Exhibit B to the Declaration of Anosheh A. Hormozyari ("Hormozyari Decl.")

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| <p>1 2. Olds never did any brake work<br/>2 himself while at Ryder; he was<br/>3 around others who did that work.</p> <p>4 3. Olds is familiar with the Rayloc<br/>5 brand of brakes but does not<br/>6 remember using it.</p> <p>7 4. Olds testified that Bendix was the<br/>8 primary brand of brakes used at<br/>9 Ryder, but Grizzly and Carlisle<br/>10 brakes were also used. He did not<br/>11 recall any other brand of brakes used<br/>12 at Ryder.</p> <p>13 5. Olds testified that he did not know<br/>14 the brand or manufacturer of brake<br/>15 shoes purchased at NAPA.</p> <p>16 6. Olds testified that Ryder did some<br/>17 relining of brakes in the early 1970s,<br/>18 but he was not involved in that work.</p> <p>19 7. Olds testified that he has no<br/>20 knowledge as to the brand name,<br/>21 manufacturer, or supplier of the<br/>22 lining material used at Ryder for the<br/>23 relining process.</p> <p>24 8. Olds performed auto repair work on<br/>25 his own automobiles starting in<br/>26 1945.</p> <p>27 9. Olds testified that he did not recall<br/>28 the brand name, manufacturer, or<br/>supplier of any replacement parts<br/>that he used on his own personal<br/>vehicles.</p> <p>10. Olds performed auto repair work on<br/>other people's automobiles starting<br/>in 1980.</p> <p>11. Olds testified that he only used<br/>O.E.M. replacement parts on the<br/>vehicles he worked on for other<br/>people.</p> | <p>2. Deposition of Paul Olds, Volume<br/>III, taken January 17, 2013, p.<br/>722:4-12, attached as Exhibit B to<br/>the Hormozyari Decl.</p> <p>3. Deposition of Paul Olds, Volume<br/>I, taken January 15, 2013, p.<br/>137:24-138:5, attached as Exhibit<br/>B to the Hormozyari Decl.</p> <p>4. Deposition of Paul Olds, Volume<br/>III, taken January 17, 2013, p.<br/>728:10-25, attached as Exhibit B<br/>to the Hormozyari Decl.</p> <p>5. Deposition of Paul Olds, Volume<br/>III, taken January 17, 2013, p.<br/>693:20-24, attached as Exhibit B<br/>to the Hormozyari Decl.</p> <p>6. Deposition of Paul Olds, Volume<br/>III, taken January 17, 2013, p.<br/>735:8-736:3, attached as Exhibit B<br/>to the Hormozyari Decl.</p> <p>7. Deposition of Paul Olds, Volume<br/>III, taken January 17, 2013, p.<br/>736:4-7, attached as Exhibit B to<br/>the Hormozyari Decl.</p> <p>8. Deposition of Paul Olds, Volume<br/>IV, taken January 18, 2013, p.<br/>848:17-25, attached as Exhibit B<br/>to the Hormozyari Decl.</p> <p>9. Deposition of Paul Olds, Volume<br/>IV, taken January 18, 2013, p.<br/>850:15-18, attached as Exhibit B<br/>to the Hormozyari Decl.</p> <p>10. Deposition of Paul Olds, Volume<br/>IV, taken January 18, 2013, p.<br/>849:1-4, attached as Exhibit B to<br/>the Hormozyari Decl.</p> <p>11. Deposition of Paul Olds, Volume<br/>IV, taken January 18, 2013, p.<br/>851:11-16, attached as Exhibit B<br/>to the Hormozyari Decl.</p> |
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## CONCLUSIONS OF LAW

1. Summary judgment is appropriate when the pleadings, discovery, and disclosure materials show that there is no genuine issue as to any material fact. Fed. R. Civ. P. 56(c)(2). “A motion for summary judgment will not be defeated by ‘the mere existence’ of some disputed facts, but will be denied when there is a genuine issue of material fact.” *Am. Eagle Outfitters v. Lyle & Scott Ltd.*, 584 F.3d 575, 581 (3d Cir. 2009) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 - 248 (1986)). A fact is “material” if proof of its existence or non-existence might affect the outcome of the litigation, and a dispute is “genuine” if “the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Anderson*, 477 U.S. at 248.
2. The fundamental threshold issue in this asbestos litigation is whether Mr. Olds was exposed to asbestos placed into the stream of commerce by Abex. *See Rutherford v. Owens-Illinois, Inc.* 16 Cal. 4th 953, 975 (1997); *McGonnell v. Kaiser Gypsum Co.*, 98 Cal. App. 4th 1098, 1103 (2002). Plaintiff must establish exposure to asbestos from products *actually* supplied by Abex and cannot rely on evidence that they *may have* placed such products into the stream of commerce. *Mullen v. Armstrong World Industries, Inc.*, 200 Cal. App. 3d 250, 257 (1988).
3. Causation is the nexus of any products liability action. Here, it would require speculation and a stream of conjecture and surmise to establish causation and find that Mr. Olds was exposed to asbestos from Abex friction products. *McGonnell v. Kaiser Gypsum Co.*, 98 Cal. App. 4th 1098, 1105 (2002); *Dumin v. Owens-Corning Fiberglas Corp.*, 28 Cal. App. 4th 650, 656 (1994); *Whitmire v. Ingersoll-Rand Co.*, 184 Cal. App. 4th 1078, 1093-1095 (2010).
4. Contradictory declarations must be disregarded. “The general rule in the Ninth Circuit is that a party cannot create an issue of fact by an affidavit

1 contradicting his prior deposition testimony.” *Van Asdale v. Int'l Game*  
2 *Tech.*, 577 F.3d 989, 998 (9th Cir. 2009) (quoting *Kennedy v. Allied Mut. Ins.*  
3 *Co.*, 952 F.2d 262, 266 (9th. Cir. 1991)). Known as the “sham affidavit”  
4 rule, this rule is necessary to maintain the integrity of the summary judgment  
5 procedure. *See id.* Sham testimony is “testimony that flatly contradicts  
6 earlier testimony in an attempt to ‘create’ an issue of fact and avoid summary  
7 judgment.” *Kennedy*, 952 F. 2d at 266. The two criteria for invoking the  
8 “sham affidavit” rule are (1) contradiction must be clear and unambiguous  
9 and (2) the contradictory affidavit must not be an attempt to explain or clarify  
10 earlier testimony. *Van Asdale*, 577 F.3d at 998-999. Mr. Olds’ declaration,  
11 served in opposition to Abex’s Motion for Summary Judgment, is a sham  
12 declaration. The declaration unambiguously contradicts his prior sworn  
13 deposition testimony.

14 Plaintiff has not provided and cannot reasonably obtain competent and  
15 admissible evidence establishing that Abex is liable for Mr. Olds’ injuries under  
16 any theory of liability. Therefore, judgment shall be entered in favor of Abex based  
17 on the Uncontroverted Facts and Conclusions of Law.

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20 Dated: December 10, 2013

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HONORABLE MANUEL L. REAL